

ALTERNATIVE PROPOSAL TO MODIFY CURRENT RESOURCE ADEQUACY PENALTY STRUCTURE

*Submitted by the Alliance for Retail Energy Markets, Pacific Gas and Electric
Company, San Diego Gas and Electric Company and
Southern California Edison Company*

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BACKGROUND

Energy Division Staff submitted a proposal on January 11, 2010 to modify the current penalty structure for Resource Adequacy (RA). At the workshop on January 27, 2010, Staff stated that the modifications were proposed to: (a) clarify when specific penalties apply; and (b) provide an incentive to promptly cure a deficiency. Several parties at the workshop expressed concerns about the proposal and requested the opportunity to submit an alternative proposal.

PROCEDURAL HISTORY

The Commission set defined penalties for System and Local RA deficiencies in its initial RA decisions in 2005 and 2006, and addressed certain other features, such as the “grace period” described below. These penalties were determined after lengthy workshops, workshop reports, and numerous comments and replies.

Resolution E-4195 defined penalties for failing to make compliance filings on time for load data or RA capacity (except for the Local RA Compliance filing). This RA “Citation Program” also includes penalties for the case in which a load-serving entity (“LSE”) has a “small” deficiency in its RA compliance filing. Commission Staff initiated this approach for small deficiencies to issue citations and charge penalties to LSEs without having to conduct the lengthy investigation process normally required for charging LSEs a penalty for an RA deficiency. The penalties specified in E-4195 are referred to as “Scheduled Penalties.”

ALTERNATIVE PROPOSAL

The Alliance for Retail Energy Markets, Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison Company (“Joint Parties”) submit the following modifications to the current RA penalty structure to address Energy Division’s core needs, *i.e.*, adding hard deadlines to the penalty rules and providing incentives to quickly cure the deficiency. In addition, the proposed modifications allow the Commission Staff to use its discretion in certain instances to change timelines or penalties to reflect the facts of the case. The Parties also retain certain features that were previously approved by Commission decision after significant workshop discussion and party comments.

1. Grace Period When Failing To File Local RA Compliance Filing On Time

Current Rule: The penalty for failing to make a timely filing of the Local RA compliance filing is the full penalty for being deficient (*i.e.*, 100% of the cost of new capacity). However, the penalty may not be charged until after a grace period of ten calendar days.¹

Staff Proposal: Eliminate the grace period.²

Proposed by Joint Parties: Retain current grace period.

2. Cure Period For Clerical Errors³

Current Rule: There is no defined rule at present. However, Energy Division's practice is to provide a period of five business days for LSEs to correct errors in their RA Compliance filings.⁴

Staff Proposal: The Staff proposes no change to current practice.

Proposed Modifications:
Specify by Commission decision that an LSE has ten business days from the date of notification by Commission Staff to correct clerical errors in its RA compliance filing without incurring a penalty for non-compliance.

3. Small Procurement Deficiency

"Small Procurement Deficiency" As Defined In Resolution E-4195: LSE filing with deficiency of: (a) $\leq 1\%$ of LSE's RAR and < 5 MW; or (b) $> 1\%$ of LSE's RAR but ≤ 1 MW.

Current Rule Pursuant To E-4195: The LSE must cure the deficiency within the time specified by Commission Staff. If the LSE cures the deficiency within the specified time, the LSE pays a "Scheduled Penalty" of \$1,500/incident.⁵ If the LSE does not cure within the specified time, the LSE "may be subject to alternate penalties."⁶

¹ D.06-06-064, p. 69.

² Staff's January Proposal, p. 2.

³ Clerical Errors are defined as typographical errors or omissions in an LSE's compliance filing. Correcting clerical errors requires revising or inserting words or data into a filing; clerical errors are not corrected through procurement of additional capacity.

⁴ Staff's January Proposal, footnote 5, p. 1.

⁵ Resolution E-4195, p. 11

⁶ Resolution E-4195, p. 8

Staff Proposal: Staff proposes applying the \$1,500/incident charge if the LSE procures the deficient capacity within five business days of notification and a \$3,000 charge if replaced more than five business days after notification.

Proposed Modifications:	
LSE cures deficiency within time specified by CPUC Staff:	LSE pays \$1,500/incident for the first Small Procurement Deficiency in a calendar year
	LSE pays \$3,000/incident for two or more Small Procurement Deficiencies in a calendar year.
LSE fails to cure deficiency within time specified by CPUC Staff:	LSE pays the applicable System or Local RA penalty for the deficient amount as of the date the filing was due, unless the LSE has requested and been granted a waiver of the applicable penalty by the CPUC Staff; the LSE must submit the request for a waiver within the time specified by the CPUC Staff to cure the deficiency.
Guidelines for setting time allowed to cure:	Commission Staff shall provide the LSE no fewer than 10 business days after notification to cure the Small Procurement Deficiency; CPUC Staff may elect to provide additional time for good cause shown by the LSE.

4. **Penalties For System And Local RA Deficiencies That Do Not Fall Under “Small Procurement Deficiencies”⁷**

Current Rule: To charge a deficient LSE with a penalty, the Commission must first conduct a formal process, including opening an Order Instituting Investigation.⁸ For LSEs deficient in System RA capacity, the Commission decided in 2005 the appropriate penalty was 300% of the cost of new capacity:

The workshop participants suggested a penalty equal to three times the cost for new capacity as an appropriate sanction for an LSE’s failure to acquire the capacity needed to meet its RA obligation. As a general proposition we believe this is appropriate to induce compliance with the RA obligation, and we hereby adopt it as our policy.⁹

For explicit reasons, however, the Commission in 2006 decided the 300% cost of new capacity penalty was excessive in the context of local RA deficiencies. In fact, the Commission expressly rejected imposing the System RA penalty for Local RA deficiencies, stating as follows:

⁷ Local RA compliance filings that are not submitted on time would have penalties applied after the 10-day grace period discussed in #1.

⁸ Resolution E-4195, p. 3.

⁹ D.05-10-042, pp. 93 – 94; see also, Phase II Workshop Report, R.04-04-003, June 10, 2005, p. 122.

D.05-10-042 adopted the broad policy that for System RAR, a penalty equal to 300% of the cost for new capacity (150% for 2006 only) is an appropriate sanction for an LSE's failure to acquire the capacity needed to meet its System RAR obligation. Several commenting parties have observed that penalties of that magnitude are unnecessary for purposes of the Local RAR program; *some parties consider that level of penalty to be excessive. We are inclined to agree.* It is our judgment that a penalty equal to 100% of the cost of new capacity is an appropriate penalty for failure of an LSE to meet its local procurement obligation.¹⁰ (emphasis added)

In so holding, the Commission set the cost of new capacity at \$40/kW-year.¹¹ Thus, current decisions governing Local RA procurement deficiencies mandate that penalties cannot exceed \$3.33/kW-month. More importantly, the decision expressly rejected concomitant penalty amounts for Local and System RA. The Commission further decided that, if the LSE is deficient in both System and Local RA capacity, the penalties are not additive. Instead, the larger charge applies.¹²

Staff Proposal: Staff proposes a lower and higher penalty, with the lower penalty applying within the first five business days after notification of the deficiency and the higher one applying after five business days of notification.

Joint Parties' Proposal: Joint parties agree with Staff that the current penalty structures for all deficiency types lack express deadlines to cure deficiencies. Unlike Staff, however, the Joint Parties believe clear deadlines in conjunction with the existing penalty amounts provide incentive enough to quickly and completely cure procurement deficiencies. Accordingly, Joint Parties propose the following modifications to the existing rule structure.

Proposed Modifications:		
Type of Deficiency	Cured Within Time Specified by CPUC Staff	Not Cured Within Time Specified by CPUC Staff
Local RA Deficiency:	\$1.70/kW-month	\$3.33/kW-month
System RA Deficiency:	\$5.00/kW-month	\$9.99/kW-month
Guidelines for setting time allowed to cure:	Commission Staff shall provide the LSE no fewer than 10 business days after notification to cure the deficiency; CPUC Staff may elect to provide additional time for good cause shown by the LSE.	

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² D.06-06-064, p. 68.

For ease of reference, below are tables comparing the existing rules and proposals by Energy Division Staff and the Joint Parties.

Existing Penalty Structure Per Commission Decisions and Resolutions:

	Small Procurement Deficiency	System Procurement Deficiency	Local Procurement Deficiency
No Temporal component to existing penalties	\$1,500/incident	\$9.99/kW-month	\$3.33/kW-month

Energy Division's Proposed Modifications:

	Small Procurement Deficiency	System Procurement Deficiency	Local Procurement Deficiency
Replaced within 5 business days of the date of notification	\$1,500/incident	\$3.33/kW-month	\$5.00/kW-month
Replaced after 5 business days of the date of notification	\$3,000/incident	\$6.66/kW-month	\$9.99/kW-month

Joint Parties' Proposed Modifications:

	Small Procurement Deficiency	System Procurement Deficiency	Local Procurement Deficiency
Replaced within 10 business days of the date of notification	\$1,500 first incident in calendar year; \$3,000 for each incident thereafter in a calendar year	\$5.00/kW-month	\$1.70/kW-month
Replaced after 10 business days from the date of notification or not replaced	LSE pays the applicable System or Local RA penalty for the deficiency	\$9.99/kW-month	\$3.33/kW-month

5. Application of System and Local RA Penalties for Partial Deficiencies

Current Rule: The current rule does not address whether the penalty, which is described as a kW/year charge, can be broken down into a daily or weekly charge, if the LSE's deficiency is for only part of a month.

Staff Proposal: Energy Division is proposing a minimum monthly charge for the penalty. As they describe it, a one-day deficiency, “such as a 30-day RA contract in a 31-day month,” would be charged a penalty for the full month.¹³

Proposed Modifications:	
LSE Is Deficient for Part of a Month for One Month in a Year:	For the first month it is partially deficient in the year, the LSE pays a penalty based on a weekly charge for the number of weeks it is deficient in the month; one day of deficiency would require a minimum one-week charge; the cure period in # 4 would apply.
LSE Is Deficient for Part of a Month for Two or More Months in a Year:	For the second and subsequent months it is partially deficient in a year, the LSE pays the full monthly charge for the applicable penalty; the cure period in # 4 would apply.

6. **Request For Waiver From Meeting Local RA Requirements**

Current Rule: The LSE is required to request the waiver at the time it makes its Local RA compliance filing and meet the requirements specified in D.06-06-064.¹⁴ However, the decision creates uncertainty about the granting of the waiver request by stating: “An LSE’s waiver request that meets these requirements is a necessary but not a sufficient condition for the grant of such waiver.”¹⁵

Staff Proposal: None.

Proposed Modifications:
LSE’s may request a waiver up to 10 days prior to the Year-Ahead Local RA Compliance filing or the True-up Filing for Local RA, as applicable. The Energy Division must rule on the request on or before the date the applicable Local RA filing is due. If the Energy Division rejects the waiver request, the LSE will have 15 days from the date of notification of the rejection to procure additional capacity. No penalty will apply unless the LSE fails to cure the deficiency within 15 days of notification of rejection. The Commission should state in a decision that, barring an overriding demonstrable circumstance, satisfaction of the requirements in D.06-06-064 is a sufficient condition to grant a waiver request.

The Joint Parties would like to discuss how this proposed timing fits with the CAISO’s evaluation of LSE’s Local RA filings to determine whether Local RA deficiencies exist and if there is a need for procurement of backstop Local RA.

¹³ Staff’s January Proposal, footnote 8, p. 2.

¹⁴ D.06-06-064, pp. 72-73.

¹⁵ D.06-06-064, p. 73.